Internal Law of International Organization

—Some Conceptualizations : Revisited

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I. Introduction

The major purpose of this paper is directed at some conceptualizations of the so-called internal law of intergovernmental organizations.

The internal law of international organizations, though having no legal nexus with a municipal legal system but rather having an institutional connection based on a constituent treaty, is far from similar in its character to the traditional concept of international law, such as subjects(or addressees), binding effect, hierarchical order, sanctions, mode of enactment of that law, and content. Because of these peculiar characteristics of the internal law, it makes it difficult for us to determine the legal position of that law in existing legal systems.

Scholarly inquiries have made into this particular subject, if not many so far. However, due to the unduly theoretical nature of this subject, contemporary views on this problem are as widely divided, as if a hundred flowers of thought might bloom. Some characterize the internal law as part of the norms of international treaty law and yet others maintain that this law forms an autonomous third legal order which is independent from any existing legal systems. In view of the various controversial issues involved in this particular subject, it seems quite natural that the legal position of this new legal material be variously interpreted by writers.

In dealing with our present subject, what matters most is the methodology being employed for the evaluation of the subject. Whatever methodology one may use, however, it should be pointed out that one particular form of argument is by no means sufficient for the best solution to this problem. In this sense, therefore, dogmatic solutions must be avoided. Every writer is free to venture a legal theory, however, it does not mean that, as matter of course, he can put forward a fatuous theory or go to extremes.

Added to that, at the same time, one should always keep in mind that the exercise of conceptualization itself has certain limitations.

In this paper, our attention will, in the main, be focused upon the internal law of the United Nations, which has the most sophisticated body of internal rules in contrast with other international organizations now existing. Our observations will be made in the following orders: firstly, we shall look at the various kinds of internal law of the UN, secondly, we shall refer to various court opinions on this particular problem, including those of the ICJ

and some municipal courts, as well as decisions of the UN Administrative Tribunal and ILO Administrative Tribunal; thirdly, we shall introduce some contemporary views on the subject in question, and lastly, some critical legal analyses will be made of these views as they effect our subject.

II. Types of Internal Law of International Organizations

Any international organization, whether it be general, functional or regional, is required to have a well arranged body of rules concerning its structure and operation in order to keep it functioning smoothly and to fulfill its aims to the utmost extent. The UN, whose body of internal laws are enriched by the legacy of its predecessor(i.e., the League of Nations), is regulated by the various kinds of internal laws and presents us with one of the fullest and richest bodies of such laws. The body of the internal laws of the Organization will continue to grow in the years ahead.

As far as the content and scope of the term "internal law of international organizations" are concerned, however, there seems to be no agreement.[1] On the one hand, some writers, by employing a wider definition, include constitutional provisions of an international organization or suggest that the internal law in question comprises all enactments of the organization, including those directly addressed to States and directly regulating their conduct.[2] On the other hand, some authors employ a narrower definition. For example, according to K. Skubiszewski, the particular term is defined as following:

> "... the internal law of an international organization consists of rules enacted by the organization and concerned with the structure, functioning, or procedure of the organization. In other words, it is law which on its face regulates the activities of bodies and persons acting on behalf of,

or staff employed by, the organization, or which regulates the setting up of the subsidiary machinery which the organization needs in order to function and attain its purposes. It also provides rules for the conduct of business assigned to the organization by its constitution."[3]

Although any one may freely assign definitions to the term, it seems to the present writer that the former definition is too wide to adopt, mainly because the law in question is termed "internal."[4] In this work, therefore, we will adopt the latter definition, i.e., a narrower definition.

The undermentioned are main categories of the internal law of the UN.

A. Regulations concerning the staff and personnel of the Organization.

i) Staff Regulations and Rules. The Staff Regulations of the UN provide for fundamental conditions of service and the basic rights, duties and obligations of the UN staff, while the Staff Rules of the UN, which are enacted by the Secretary General according to the provision of Article 12-2 of the UN Staff Regulations, consist of more detailed provisions than those of the former.

ii) Pension Regulations.

B. Rules of procedure for the various organs of the Organization.

Rules governing procedure range from those of the principal organs to those of the subsidiary organs of the UN. The Rules of Procedure of the UN General Assembly, for example, which, by the way, are termed "international parliamentary law" by one learned writer, particularly deserve our attention not only for the reason that they consist of great numbers of detailed provisions

but because they seem to have immediate bearing upon the rights and interests of Member States.

C. Financial regulations.

These regulations relate to budgetary matters, funds, internal control and audit(including external audit) and similar items.

D. Rules governing the establishment and functioning of new organs or autonomous bodies acting within the framework of the organization.

Examples of these are the Statute and Rules of the UN Administrative Tribunal and the Statute of the International Law Commission. As for the operational agencies of the UN, we may name the resolutions establishing UNICEF, the United Nations Development Programme, and the terms of reference of the regional Economic Commissions of the UN.

E. Regulations concerning administrative problems other than those indicated under (A) and (C).

Examples of these regulations are Headquarters and the UN Flag Code and Regulations.

F. Rules enacted to implement the tasks and functions assigned to the Organization by the Charter.

Examples of these are the regulations concerning the Registration and Publication of Treaties and International Agreements which were adopted by the General Assembly on Dec.14,1946.

III. Decisions of the Courts Relating to the Juridical Nature of Internal Law

In dealing with the present problem, at the outset, our attention should be directed to an examination of the opinions of such

courts as the UN Administrative Tribunal, the ILO Administrative Tribunal, the ICJ and municipal courts.

1. Judgments of the UN Administrative Tribunal and the ILO Administrative Tribunal.

As Article 2, sec. 1 of the Statute of the UN Administrative Tribunal clearly sets out, it provides *ratione materiae* for the Tribunal. The *ratione materiae* of the Tribunal are, in the main, the internal law of the UN which is under the jurisdiction of the Tribunal.

We find a few cases where the Tribunals have touched somewhat upon the existence of the internal law of the UN and the ILO. First of all, in the *Waghorn* case, the ILO Administrative Tribunal affirmed that "... Whereas the Tribunal is bound exclusively by the internal law of the Organization..."[5] In the *Aglion* case, the UN Tribunal stated that "These are provided by the internal law of the United Nations consisting of the Charter, Regulations adopted by the General Assembly, Staff Rules promulgated by the Charter, Regulations adopted by the General Assembly, Staff Rules promulgated by the Secretary General, and the Statute and Rules of the Administrative Tribunal."[6]

As we can see from these cases, both of the said Tribunals have preferred to speak in terms of the internal law of the organizations, rather than in terms of international law. That the Tribunals have avoided dealing with highly theoretical questions of the legal character of the internal law seems quite natural, since their obligation is to pass judgment on each case at issue and

nothing more. The Administrative Tribunal of the League of Nations also conformed to this principle. Take for example, in the *di Palma Castiglione* case, it affirmed that "... Il est tenu d' appliquer le droit interne de la S.d.N. ..."[7] It also affirmed the same concept in the two cases of *Phelan ; Maurette*[8] and *Souc.*[9]

2. Judgments of the International Court of Justice

In relation to our subject, we may cite two advisory opinions of the Court. In the first place, in the *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* case, the Court, though it was not called upon to consider or discuss the law governing the relationships between the UN and its officials, recognized the existence and importance of this internal law.[10] Also, the Court in the *Judgment of the Administrative Tribunal of the ILO upon complaints made against UNESCO* case, though again it did not examine the legal nature of the internal law *per se*, stressed the importance of the element of custom and practice in the administrative law of the organizations.[11] However, in the dissenting opinion of Judge Córdova, and also in the pleading of Professor P. Reuter, who represented the French Government in this particular case, we can find their own views on the legal nature of the internal law in question. We shall refer to the opinions of these two writers later.[12]

3. Decisions of Municipal Courts.

Municipal law is not only a source of the internal law of international organizations, but a separate legal system. What led to the establishment of international administrative tribunals in international organizations was the recognition of the peculiar status

of the international functionaries. It is quite clear, therefore, that municipal courts have no jurisdiction over a case alleging non-observance of contracts of employment of the functionaries of international organizations. However, municipal courts have had occasion, even if not many, to refer somewhat to the internal law in question, in the course of deciding jurisdiction.

We may raise such examples as the decisions of the French Conseil d'Etat in the *Re Dame Adrien and Others* case(1931)[13] and of the Italian Court of Cassation in the *International Institute of Agriculture v. Profili* case(1931).[14] In the latter case, in which the former head cashier of this particular Institute initiated proceedings in an Italian court for compensation for dismissal, the Italian Court of Cassation, upholding the appellant's argument that the Institute is not within the jurisdiction of an Italian court, referred somewhat to the legal nature of the internal law of the Institute. The Court held that a) the Institute, which owes its origin to the common will of a number of States expressed in the Pact of Union is an international entity, an International Administrative Union; b) international practice knows of two kinds of international administrative unions: (i) the organization is entrusted to one of States by whose agreement it has been constituted, (ii) the organization remains autonomous and removed from interference by any one State of the Union; c) this is therefore a case of an autonomous union free("una Unione autonoma"), as regards its internal affairs, from interference by the sovereign power of the States composing the Union, except when it consents thereto; d) following the better and more widely

held doctrine, this Court holds that the Institute is such an international legal person; e) this being so, its power of self-determination or autonomy rules out all States interference and all authority of its laws. The authority of such laws may, in regard to international administrative unions, be recognized in cases in which the Pact of Union or the internal regulations refer, through incorporation.[15] Thus the Court distinctly recognized the Institute as an entity which holds an international juridical personality, and therefore it is beyond the cognizance of an Italian court. There appears to be no doubt that the Court, in rendering this particular judgment, took an additional factor into consideration. That is, that on June 20, 1930, Law No. 1075, authorizing diplomatic privileges and immunities to the members of the General Assembly and Permanent Committee of the Institute as well as to the officials of the first and second categories of the Secretariat, had been enacted.[16] Having clarified the legal status of the Institute, the Court states that the Institute, a body corporate holding an international personality, has a self-governing power over its internal matters and consequently the internal law of the Institute can be characterized as a particular legal order of its own("l'ordinamento giuridico particolare dell'unione stessa").[17]

As has been observed above, it may be safe to state that there has not been any decision touching upon the essence of the problem of the juridical nature of the internal law in question except the statement of the Italian Court of Cassation as expressed in its judgment in the *International Institute of Agriculture v.*

Profili case.

IV. Various Doctrines on the Juridical Nature of Internal Law

There is no doubt that the question of the evaluation of the legal nature of the internal law of international organizations is a theoretical problem of great complexity which cannot be easily answered. Mainly because it involves a number of controversial problems, such as the definition (or content and scope) of the term "internal law," and of the term "legal system" and so forth. Contemporary views on this subject are, in fact, in a chaotic state, however, they may be roughly divided into three groups. The first group of writers, whose opinions were held, in the main, in relation to the legal nature of the procedural rules of the norms of international treaty law. Writers who belong to the second group, because of the distinctive features of internal law in comparison with traditional international law, classify it as a new source of international law. In other words, they submit an expanded concept of international law. Writers who belong to the third group, on the other hand, classify this law as a new distinct third legal order.

1. Internal Law as Norms of Treaty Law

Anzilotti, D. —Regarding the legal nature of the procedural regulations of international organs, Anzilotti maintains that such rules of procedure as the Rules of Procedure of the Council and of the Assembly of the League of Nations as also the Rules of Procedure of the Permanent Court of International Justice are a specific type of international treaty, arrived at indirectly by the intermidiary of common organs of the States.[18] According to

this writer, therefore, rules of procedure, bearing the character of treaty-law, do not differ from provisions in the constituent treaty.

Jessup, P.C. —Jessup who, in his work, examines and presents the legal aspect of the rules of procedure of organs of the UN, states that:

> "The term international legislation is now commonly used to describe many multipartite treaties which lay down rules by which states agree to be bound. The rules of procedure of an international organ such as the General Assembly have a comparable legal character. One difference is that the States which are bound by the multipartite treaty known as the United Nations Charter, have agreed that in certain defined situations they will be bound by a rule adopted by a specified majority vote even though they may have voted in the minority."(19)

He goes on to say that:

> "No Member of the United Nations has ever maintained that it was not bound by a certain Rule of Procedure because it had voted against its adoption. Article 17 of the Charter provides: ..Its assessment and its obligation to pay the assessment may thus be the result of the application both of the Charter provision and of some Rules of Procedure. There would be no sound basis for contending that while a Member is bound by the procedural rule in Article 27 of the Charter concerning voting in the Security Council, it is not bound by other procedural rules adopted by the Security Council under the authority of Article 30 of the Charter."(20)

By laying emphasis on the institutional connection between the Rules and the Charter provisions, he then draws the following general conclusion that:

> "It is submitted, therefore, that the rules of procedure, or what we may call the 'parliamentary law' of an international organization, may properly be considered as a part of international law of the same general legal character as treaty law and therefore legally binding upon the states

members of the organization."[21]

Prischepenko. —He, in his work "Parliamentary Law of the United Nations," refers to the subject in question by stating that:

"Parliamentary law of the United Nations gradually establishes itself as part of public international law, both conventional and customary. Its basic rules are laid down in an international treaty. Its other written rules are made under the authorization contained in that treaty. Its unwritten rules represent interpretation and development of this written law."[22]

Prandler, A. —Regarding the subject in question, this Hungarian writer maintains that:

"The functions of the Security Council, the rights and obligations of its members are laid down in the Charter. Under Article 30 of the Charter the making of rules of procedure is left to the Council but by this very provision these are placed within the frames, taken in the wider meaning, of the Charter. For this reason the international law nature of the Rules of Procedure cannot be doubted for the source of their existence is the Charter which is a multilateral international treaty. That internal rules of procedure are legal norms is accepted also by a significant part of writers on international law."[23]

2. Internal Law as New Part of International Law.

Jenks, C.W. —This author, who is one of the authorities in this field of study, maintains that:

"The administrative law of international organisations deals partly with the relations of such organisations with and partly with their relations with individuals; it is therefore not in any direct sense a law between States, but it is nonetheless an essential element in contemporary public international law."[24]

He also suggests that:

"... but assuming that these matters now fall within the scope of international law they nevertheless constitute new and distinctive branches of the law, distinguishable from the law governing the mutual relations of States..."[25]

Verdross, A. —This writer, who recognizes individuals as subjects of international law insofar as their conduct is regulated immediately by treaties or by regulations of international organs, suggests making a distinction between conventional international law and the internal law, since the latter differs in many aspects from the traditional concept of international law. Regarding the subject in question, he states that:

> "These rules are, therefore, structurally identical with the rules on municipal law. They have in common with the old concept of international law only the one criterion of having been created by an international procedure; but they have the structure of municipal norms, insofar as they involve the same sanctions."(26)

He further submits that "For these reasons it seems convenient to form a new group out of these norms and to designate them by a new name (i.e., internal law of the community of States)."(27)

Zemanek, K. —This author in his work "Das Vertragsrecht der Internationalen Organisationen"(1957) states that:

> "Die Grundlage ihrer Erzeugung ist eine Bestimmung der Verfassung der internationalen Organisation, also eine durch Vertrag geschaffene völkerrechtliche Norm. Erzeugt werden sie in einem zwischenstaatlichen Verfahren. ... Sie teilen mit dem Völkerrecht das Verfahren der Erzeugung, da sie in einem zwischenstaatlichen Verfahren entstehen. In der Art ihrer Sanktionen gleichen sie aber dem staatlichen Recht. Durch ihre Erzeugung haben sie internationalen Charakter und sind keiner nationalen Rechtsordnung zurechenbar. ... Gegenuber dem allgemeinen Völkerrecht oder dem Verfassungs recht der Organisation stehen diese Normen auf einer niedrigeren Stufe, denn sie haben ihre Geltungsgrundlage nicht in einer Norm des allgemeinen Völkerrechts, sondern in einer auf Grund desselben geschaffenen vertraglichen Norm."(28)

Like Verdross, he then suggests introducing a wider concept of international law.(29)

Virally, M. —Virally characterizes the nature of internal law this way:

"Obviously some acts of an international organ can constitute a source of the internal law of the institution to which that organ belongs without being a source of rights and duties for member states; ... But the distinction between international law and the internal law of international institutions is in no way comparable to that between international law and the internal law of states given that it is sovereign states who are the members of international institutions and are at the same time members of most of the organs of those institutions. To say this, however, is to say enough to show that the internal law of international institutions is not distinct from international law. It represents rather a new branch of the latter with special features arising from the fact that some at least of its rules apply directly to individuals or to international organs and touch states only indirectly in their capacity as members of the institutions concerned, if not even more specifically as members of one or other organs of that institution."(30)

Reuter, P. —Reuter expressed his view on the subject in question in his pleading before the ICJ in the *Judgment of the Administrative Tribunal of the ILO upon Complaints made against UNESCO* case that:

"Les règles qui définissent les rapports entre les agents des Nations Unies sont issues de la Charte et constituent le droit intèrieur d'une organisation internationale; en ce sense elles relévent d'une certaine maniere du droit international, mais d'une certaine maniere seulement, car à vrai dire il s'agit du droit interne d'une organisation internationale. Mais quelle que soit la terminologie que l'on adopte, toutes les régles propres aux rapports entre États ne sont pas applicables aux rapports entres les Nations Unies et leurs agents. ... En un mot, la société des États est une société où il n'existe pas d'autorité commune; les rapports entre les Nations Unies et leurs agents constituent au contraire un systéme juridique organisé, qui a beaucoup d'analogie, à certains égards, avec un systéme étatique."(31)

The author therefore maintains, by employing the wider concept of traditional international law, that the internal law, which resembles municipal law in many aspects, forms "systemes juridiques, de corps juridique distincts tant du droit international classique, que des droit nationaux."[32]

3. Internal Law as an Independent Legal System.

Carlston, K. —With regard to the subject in question this writer maintains that:

> "Although international administrative law ultimately finds its source in and is dependent upon certain principles of public international law, although international administrative law is peculiarly and pre-eminently of an international nature, it has its own unique charcter."[33]

He goes on to state that:

> "International Administrative Law is not, however, a part of public international law because it does not apply to the relations of states but instead to the relations between an international organization and the individual members of its secretariat."[34]

He therefore characterizes that law as a unique body of law, to be distinguished from public international law, municipal law and so-called transnational law.[35]

Seyersted, F. —This writer, who advocates the so-called doctrine of teleological constitutionalism, evaluates the legal nature of the internal law this way:

> "But such legislation is not, *ipso facto*, binding upon outside parties. It is binding in the first place, upon the organs and the officials as such. It is, in fact, an organic legislative power, similar to that exercised by States. ... The legislation is also binding upon the member States and their representatives in their capacity as members of organs of the organization. It may also, within narrow limits, be binding upon the member States in organizational matters relating to their membership of the

organization as a whole."[36]

He goes on to state that:

"In respect of sources, subjects, contents and hierarchical order, the internal law of international organizations is comparable, not to international law, but to the municipal public law of States, and it is supplemented by analogies from the latter legal systems."[37]

He then submits that:

"However, there is also a third possibility, which does not presuppose the recognition of individuals as subjects of international law, namely, the internal law of the organization, which is an independent system of the law, comparable in most respects to national law, rather than to international law."[38]

Focsaneanu.L — This writer, who is apparently affected by the French institutionalist school (such as M.Haurio and G.Renard), maintains that:

"Il n'est pas difficile de se rendre compte du caractère artificiel et spécieux de cette thèse. Il faut vraiment aller loin dans la fiction pour voir un accord interétatique dans le désaccord des Etats minoritaires, qui s'opposent à l'adoption d'une disposition interne par voie de vote majoritaire ou encore dans l'édiction par le Secrétaire général de l'O.N.U. de dispositions réglementaires qui ne seront même pas portées à la connaissance des Etats membres.

En réalité, le droit interne des organisations internationales n'est pas de nature conventionnelle, mais constitue une manifestation de la volonté juridique propre de l'organisation, exprimée selon les règles constitutionnelles de celle-ci."[39]

He goes on to state that:

"En pure logique, rien ne s'oppose a une telle conception. L'interprète reste libre de définir ses notions de base comme il l'entend et d'employer la terminologie qui découle de ses définitions. Toutefois, parmi les diverses notions et terminologies possibles, il y en a qui facilitent une bonne compréhension des choses et d'autres qui entravent une analyse

correcte des phénoménes.

Ceci dit, il ne nous semble pas que la pensèe gagne en clarté en utilisant des concepts aussi hybrides que celui d'un droit des gens élargi. Les relations égalitaires entre Etats souverains, d'une part, les rapports d' autorité entre les organisations internationales et leurs agents, d'autre part, forment des rèalitès si hétérogenes, qu'il n'y a aucun avantage méthodologique à les amalgamer ensemble dans une définition artificiellement large du droit des gens. Les règles gouvernant les relations des organismes internationaux et de leur personnel présentent, par contre, de très fortes analogies avec celles des droits publics ètatiques. C'est ce rapprochement qui nous paraît devoir servir de fondement à une bonne elaboration des concepts."(40)

And he further states that:

"Si les règles relatives au fonctionnement interne des organisations internationales ne peuvent être rattachées, sans forcer les idées, au droit des gens interétatique, et si la notion élargie du droit international doit être rejetée comme hybride et dépourvue d'unité, la conception qui s' impose reste celle de l'autonomie du droit interne des organisations internationales."(41)

He then suggets that:

"La 〈summa divisio〉 de la réalité juridique doit, en conséquence, distinguer : a) le droit international, régissant les relations entre sujets qui relévent de l'ordre juridique international et b) le droit interne des sujets de droit international. Comme ces derniers se subdivisent en Etats et en entités non étatiques, le deuxième terme de la classification se subdiviser-a lui-aussi en droit interne étatique ou national et droit interne des entités non-étatiques, notamment des organisations internationales."(42)

V. Some Legal Analyses of the Nature of Internal Law

In the foregoing parts, we have looked into judgments by the various types of judicial bodies, and we have observed the opinions of various contemporary writers concerning the subject in question. In this chapter, we intend to make some legal

analyses regarding the subject. In order to grasp the unique character of the internal law, we shall enter into the examination of this question in the light of the following tests; firstly, its source and secondly, criteria other than "source," e.g., subjects of that law, binding force, hierarchical order, etc. As for the object of our observation, we shall, in the main, deal with on the one hand, the staff regulations, and on the other hand, the rules of procedure of international organs. In the last part of this chapter, we shall discuss the proper place of the internal law in question in the present system of law.

1. Source of Internal Law

The existence of an international organization as one component of international subjects on the international plane, needless to say, results from the conclusion of an international treaty, viz., a constituent treaty, among States themselves. A constituent treaty of an international organization as a fundamental law of an organization, like the constitution of a State, covers virtually all aspects of its activities ranging from its functional aspects to its structural ones. The internal law in question falls within the latter. A constituent treaty sets forth some provisions concerning internal administrative matters, but generally speaking, it does not provide an exhaustive set of rules for its housekeeping. Almost all organizations, therefore, enact legal rules to implement and to supplement their constitutional provisions. In effect, the validity of the internal law is ultimately derived from the basic treaty of the organization, which is international law. In this sense, therefore, it bears an unmistakable international

character.

It may well be presumed that the fact that the internal law finds its source ultimately in the provisions of the constituent treaty of the organization would undoubtedly affect observers' conclusions on the issue in question to a great extent. It appears natural, therefore, from the point of view of methodology, that the most likely idea to come out first in characterizing this law, would be to employ the following premise; that "as a general rule, the legal basis of a system of law provides a better criterion for its classification than does its content."(43)

As a matter of fact, regarding the juridical nature of internal law, many writers agree that this particular law bears an international character, since the basis of that law derives from the provisions of the basic law of the organization. In this regard, one learned writer explains that:

> "If a body has the character an international body corporate the law governing its corporate life must necessarily be international in character; it cannot be the territorial law of the headquarters of the body corporate or any other municipal legal system as such without destroying its international character."(44)

Some writers, therefore, draw their conclusions, by laying emphasis particulary on the following fact; that internal law finds its basis in the provisions of the basic law, and that the law can be characterized as forming part of international law. For example M. Korowicz states in this regard that:

> "However, their personal relationship with the international organization, concerning their salaries, their status, the manner of performing their duties, etc., fell under international law, because the international organization itself was subjected exclusively to the rules of that law. ... It

is argued by many publicists that the personal status of international officials belongs to the field of international administrative law and not to that of international law in general. However, whether it is administrative law or criminal law or any other branch of international law, it is always the same international law."(45)

There is no denying the fact that internal law finds its basis in the provisions of the basic law, however, some writers, especially those who belong to the third group, do not consider this criterion as a decisive one in the evaluation of the law now under discussion. For example, H.G.Schermers points out that:

"The internal rules of an international organization can be derived from no other legal system. Unlike private international organizations, public international organizations are not subject to any national law. They must create their own internal law. That law is an exclusive part of a separate legal system, which depends on its own constitution but remains independent of any other legal system."(46)

For him, therefore, the legal basis of the law does not mean much as a criterion for the classification of that law. Instead of seeking the legal basis of the law as a criterion for its classification, he seems to substantiate his conclusion by employing the institutional theory of law.

As has been pointed out above, internal law finds its basis ultimately in the provisions of the basic law of an international organization. In this respect, even the writers who belong to the third group do not raise any objection. In evaluating internal law, however, one should be particularly careful not to accept hastily the following assumption; that an institutional connection between the sources of two legal systems necessarily means that one system forms part of the other. In relation to this assump-

tion, what Akehurst pointed out in his work deserves mentioning. The relevant passage reads:

> "However, if one argues on these grounds that the internal law of an international organisation forms part of international law, one would also be logically forced to admit that the law of any territory placed under the legislative power of an international organ also forms part of international law, with the result that all the subjects of that territorial law become subjects of international law."[47]

The same line of thought is also expressed in the joint dissenting opinion by Judges Spender and Fitzmaurice in the *South West Africa* cases (preliminary objection) of 1962. In their dissenting opinions, they stated that:

> "We might add, what it should scarcely be necessary to say, that the fact that an act is done under an authority contained in an instrument which is itself treaty (in this case the League Covenant) does not *per se* give the resulting act a treaty character. To take a familiar recent instance - under Article 17 of the United Nations Charter the General Assembly is authorized to approve the budget of the Organization, and the budget as approved is binding on the Member States. It could not be contended that it is on this account a 'treaty' any more than could a resolution of the General Assembly apportioning the expenses of the United Nations amongst its Members under Article 17(2) of the Charter."[48]

The invalidity of the said assumption is also claimed by G. Schwarzenberger.[49]

As has been demonstrated above, it is by no means sufficient to evaluate the question by employing one particular form of argument. In order to grasp an overall picture of internal law, a study should be made by taking the results of various tests into account.

2. Subjects and Binding Effect of Internal Law

In the preceding Section (1), it has been demonstrated that an institutional connection between the sources of the two legal systems, i.e., a constituent treaty and the internal law, on the other hand, does not mean that the latter system forms part of the former. Then, in this section, we intend to examine our subject in the light of such criteria as subjects, binding force, hierarchical order, mode of enactment of the internal law, and so on. As for the object of our examination in this part, as mentioned above, we shall, in the main, deal, on the one hand, with staff regulations, and on the other hand, rules of procedure of international organs, both of which, as is well known, have attracted writers' attention the most.

(a) Staff Regulations and Rules

Of all norms which regulate the legal relationships between an international organization and its staff, staff regulations and rules have by far the most immediate bearing upon the latter. These two norms cover various aspects of legal relationships between them. These norms may be characterized as the ones which regulate an internal legal status of international officials in relation to the organizations. On the other hand, their external legal status is regulated by means of international treaties.(50)

So far, various opinions have been expressed by writers with regard to the legal nature of staff regulations of the international secretariats. Some characterize them as falling within the realm of norms of international law, while some object to such an opinion and they differentiate the rules concerned from international law.

As far as this particular question is concerned, focal points of issue would, in the main, be reduced to two. That is to say, firstly, the problem of the international personality of international officials, secondly, that of the binding effect of staff regulations.

To begin with, let us examine the first question. As far as the question of the international personality of international functionaries(or individuals) is concerned, writers' opinions are not unanimous, for the reason that no universally accepted criterion exists for defining what is meant by the "international personality of individuals." Such being the case, Verdross, for example, maintains that individuals are subjects of international law insofar as their conduct is directly regulated by treaties or by the regulations of international organs.(51) With a more rigid viewpoint, Nϕrgaard holds that individuals are subjects of international law insofar as they are conferred rights and/or placed under obligation by international law.(52) On the other hand, if one holds the old juristic theory, like Carlston,(53) then, the present question has to be answered in the negative. One's position on the question of the international personality of individuals, obviously, reflects one's conclusion on the question of the international personality of international officials. Writers who answer in the affirmative to the former question, therefore, tend to regard staff regulations as falling within international law, while writers who answer in the negative to the said question tend to regard the law not as part of international law but as forming an autonomous legal order of its own.

Here is a brief list of writers who belong to the former group.

They are as follows; Waldock,[54] Korowicz,[55] Akehurst,[56] Gascon y Marin,[57] Kunz,[58] Verdross,[59] Jenks,[60] Nørgaard,[61] Jessup,[62] Langrod,[63] Bastid,[64] Friedmann,[65] Fawcet,[66] and Virally.[67] Of these writers, Waldock, Gascon y Marin, Kunz, Jenks and Verdross respectively advocate that the law in question should be regarded as a subdivision of international law.[68] The rest of the writers do not necessarily suggest establishing such a concept as a subdivision of international law.[69]

Then, writers who belong to the latter group are as follows; Schwarzenberger,[70] Focsaneanu,[71] Carlston,[72] Seyerested[73] and Ross.[74] As far as the opinions both of Schwarzenberger and Focsaneanu are concerned, however, theirs are not exactly as same as those held by the rest of the writers. As for Schwarzenberger, he characterizes what he terms the "U.N. Service Law" simply as the domestic law of the Organization, and no more.[75] As regards the view held by Focsaneanu, he prefers to evaluate the law as forming part of the internal law of members of the international community.[76]

As demonstrated above, writers' opinions on the question of the international personality of international functionaries are divided into pros and cons. In dealing with this question, however, it should be pointed out that any solution denying *a priori* the international personality of individuals must be avoided, since it leads to nothing but dogmatism.[77] In relation to this particular question, the present writer would like to raise one question. That is that Nørgaard, in evaluating the international personality of international officials, examines the legal nature

of the international administrative tribunals before which they have their *locus standi* and draws his conclusion that those tribunals are international courts (or tribunals).[78] Consequently, according to him the officials can be regarded as subjects of international law, because they enjoy a procedural capacity. His conclusion, however, seems to be ill-founded. Are those tribunals truly international in the stricter sense of the word?

As far as the character of such international administrative tribunals as the U.N. and the ILO is concerned, there is no denying the fact that it differs from that of regular international courts in the following respects; firstly, their legal basis, secondly, their jurisdiction *ratione materiae*, and lastly, their jurisdiction *ratione personae*. Judging from the unique character of the tribunals, it seems to be more appropriate to regard them as entities holding their own unique position. They are, no doubt, unconventional judicial bodies, established, not by means of international treaty, but by an internal legislation of an international organ. In view of this, strictly speaking, the nature of the procedural capacity of international officials itself seems to be different from that of the same capacity conferred by such a treaty as the Convention establishing the Central Court of Justice(1907).[79] The latter Court, which is regarded as having broken down traditional nation-State monopoly of international relations, actually differs from the international administrative tribunals in such respects as its applicable law and its legal basis.[80]

(b) Rules of Procedure of International Organs

Before making our observation on the legal nature of rules of

procedure, it may be worthwhile to refer in brief to the content and scope of rules of procedure. Rules governing procedure range from those of the principal organs to those of the subsidiary ones of an international organization. Here, however, for the sake of convenience, this writer would like to deal with the Rules of Procedure of the UN General Assembly.(81)

As far as the Rules of Procedure of the Assembly is concerned, they consist of great numbers of detailed provisions, and as one learned writer(82) points out, they are the fullest and the richest body of such rules, having in many cases set a pattern for other organs and international organizations.

In relation to the Charter, that is to say, the relation of the content of these Rules to the provisions of the Charter, they may be divided into three distinct groups. The first group, which numbers the smallest, consists of rules transcribed verbatim from Articles of the Charter.(83) The second group, which is also a small number, comprises Rules either entirely based on provisions of the Charter or only partly based on those of the Charter.(84) The third group includes the greatest number of rules whose content was formulated by the Assembly, with no reference to the provisions of the Charter.

In dealing with our subject, as is clear from what has been shown above, it is necessary to take into account the fact that a legal value of those three groups differs insofar as they relate to the Charter, depending upon the degree of reliance on the Charter.

Writers' opinions on the present subject are roughly divided into

three groups. Writers who belong to the first group hold the opinion that the rules of procedure belong to a body of norms of international treaty law.[85] Writers who belong to the second group assign them to the internal law of international organizations embraced, by a wider conception of international law.[86] While writers who belong to the third group recognize them as a new body of legal rules, independent of either international law or the municipal law of States.[87]

Writers who hold the first position, in evaluating the present subject, lay stress on the fact that there exists an institutional connection between the procedural rules of international organs and a constituent treaty, and for that underlying reason, they reach the following generalization that the rules concerned bear the same legal character as treaty law.

As far as the Rules of Procedure which are in conformity with the Charter are concerned, as Jessup points out,[88] they may no doubt assume the legal value of Charter provisions in the sense that they are a textual reproduction of a certain provision of the Charter. The Rules of Procedure of Assembly which assume the legal value of the Charter provisions, therefore, are not subjected to an ammendment in the manner prescribed in the last chapter of the Rules.[89]

As regards the legal nature of Rules which are adopted pursuant to the authority which the UN Charter confers, the same author regards them as not being different from the Rules just mentioned above. That is to say, the latter Rules also have the same general legal character as treaty law. Whether or not his

position on the legal value of the latter type of Rules is viable must await careful study.

We have already mentioned in the earlier part of this section that as far as the relation of the content of the Rules of the Assembly to the provisions of the Charter is concerned, it may be reduced to three distinct groups. Among those three distinct groups, the group of Rules with which we are going to deal here comes under the third group. The content of Rules of this group was formulated by the Assembly with no reference to the provisions of the Charter. In view of this, therefore, one learned writer calls them "autonomous rules of procedure."(90) As far as these(autonomous) Rules of Procedure are concerned, which, by the way, constitute by far the greatest number in the whole provision of the Rules of the Assembly, it is, at least, arguable, as shall be demonstrated in the following pages, to generalize them as having the same general legal character as treaty law. Cardinal elements which make Rules of the third group different from treaty law may be reduce to three. Firstly, the former finds its legal basis in its superior constituent treaty, i.e., the Charter. In this sense, therefore, as some writers(91) properly point out, the former is characterized as a hierarchical lower type of norms which come into being under the authorization contained in its constituent treaty. Secondly, in terms of a legislative method, the former is based upon the majority voting system by way of internal acts, i.e., resolutions, whereas treaty law, in its conventional concept, has nothing to do with such a method. That is to say, the latter is regarded as a consensual agreement between

sovereign States. Lastly, as far as the binding effect of the former is concerned, it is understood as not being *ipso facto* directed upon the individual sovereign States but rather upon the Member States as one of the components of a certain international organ, i.e., the UN General Assembly.[92] While, in the case of treaty law, its binding effect, needless to say, is directed upon the individual sovereign States. As is clear from the formers raison d'être, it essentially covers internal procedural matters of the Organ which do not directly touch upon rights and duties of Member States and therefore the former does not function in a way peculiar to the treaty norms.

3. A Critical Analysis of Contemporary Writers' Opinions on the Juridical Nature of Internal Law

In the preceding chapter, we have made some legal analyses of the present subject in the light of source and criteria other than "source." It should be noted however that, in the course of our investigations so far made, we have dealt with only a limited number of the internal laws of the organizations. Nonetheless, by having gone through various writes' opinions regarding the subject, it seems to the present writer that the general legal characteristics of the internal law, to some extent, has become clear.

As can be seen from what has been discussed above, in dealing with the present subject, some writers cover various types of internal law for that purpose, while some specifically deal with either staff regulations or rules of procedure. It goes without saying that for better analysis of the question, the former approach is more appropriate than the latter.

With regard to the definition of the term "internal law" of international organizations, as has already been mentioned earlier, there is no agreement concerning it. Therefore, one learned writer[93] included in the definition, not only constitutional provisions of an international organization but also all enactments of the organization. In our opinion, however, as Skubiszewski points out,[94] that law should be confined to rules relating to a restricted area of activity, namely, rules enacted by the organization and concerned with the structure, functioning, or procedure of the organization.

In evaluating the internal law in question, writers employ various criteria, such as source, subjects, sanctions, hierarchical order, binding force and mode of enactment of that law. However, it should be pointed out that there is no single decisive criterion by which one can tell what constitutes a separate legal system. Furthermore, in relation to the present question, one should always keep in mind that the exercise of classification itself has certain limitations.

With what has been said above in mind, here, we intend to examine the viability of each of the said three schools of thought.

As far as the first position is concerned, characterizing the internal law as forming part of conventional international law, it does not seem to be stringent enough. It fails to grasp the peculiar features of the internal law. As was mentioned before, the latter, beyond doubt, differs structurally from the former in such aspects as subjects, hierarchical order, binding effect, and sanctions. In this sense, therefore, the following construction

presented by Anzilotti that the Rules of Procedure of the Assembly of the League of Nations can be characterized as a specific form of treaty law does not seem, to say the least, to reflect the real position of the Rules. In relation to Anzilotti's opinion, there arises the following question: —how does he characterize the procedural rules of the subsidiary organs of the organizations? Are they also regarded as bearing the same character as the procedural rules of the principal organs of the organizations? In any event, the rules of procedure of the international organs, on the whole, do not function in a way peculiar to the treaty norms.

Then, let us see the second opinion which classifies the internal law as a new source of international law. This particular opinion, which has been suggested by a number of authors, seems to match the factual position of the law in question. For it recognizes fully, in contradistinction to the first position, various peculiarities of that law. Against this opinion, however, Nϕrgaard, from a theoretical point of view, raises an objection. Referring to the difference of opinions expressed both by Ross and Verdross with regard to the present question, he states that:

> "The important difference between the opinion expressed by Ross and Verdross original division is that whereas Ross considers the two groups independent legal orders, Verdross establishes the two groups as subdivisions within an enlarged concept of international law. Nevertheless, the same objections as mentioned above are valid with regard to Verdross' division, admittedly not with the same force as above because Verdross does not establish two independent legal orders. The main objection, however, that it is difficult to divide rules which form part of a continuous line in two distinct groups, remains."(95)

Nϕrgaard's objection directed at Verdross's view, in the present

writers opinion, seems to hold true so long as he adopts a dynamic view of international law by laying emphasis on the fact that the legal rules of the international community present a continuous line of development. However, this does not necessarily mean that Verdross' construction should be regarded as being untenable. For Verdross, differing from Nϕrgaard, differentiates between traditional international law and the internal law in question. Although both Nϕrgaard and Verdross, in their works, specifically dealt with the question of the legal nature of the rules regulating the legal status of international functionaries, seen from the point of view of the classification of the internal law as a whole, i.e., the procedural rules of the international organs and so forth, Verdross' formula seems to well reflect the factual position of the internal law.

In the last place, let us see the third school of thought and examine whether it is viable enough in the light of the legal reality of the international community. A group of writers who maintain this last position, as has often been mentioned so far, regard the internal law in question as having no legal link with any existing legal systems and they submit that that law constitutes an autonomous third legal order of its own.

The focal point of issue which invites our close analysis of the idea of the third legal order is whether what they claim a new independent third legal system can be factually verified with stringency. Here, in the first place, we shall look at some contemporary writers' views which object to the idea of tripartite legal system. Then our critical opinion regarding the propriety of the

third position follows.

To date, a sizable number of writers have specifically made their comments on this last position. So far as the present writer knows, adversaries to the third view are the following: Nørgaard, Verdross, Akehurst, El Erian, Skubiszewski, Detter, Bernhardt, Opsahl and Balladore Pallieri.

To begin with, both Nørgaard[96] and Verdross,[97] in relation to the Ross' position on the evaluation of the juridical nature of the laws regulating the legal status of individuals (including the functionaries of the international organizations), maintain that the construction suggested by Ross is disputable in the sense that it does not comprehend the new legal phenomenon (such as the one which we are dealing with in the present work) in its totality. The new legal material, according to them, should be understood systematically. To this view of Ross, Nørgaard further comments that:

> "It is true that the legal norms which are not national law present so great dissimilarities with regard to the subjects of the rules and with regard to their content that a division into two or more legal orders would be desirable. It is however, a question whether such division, at the present stage of development, at all can be undertaken in an adequate way."[98]

Thus, he, in raising an objection to Ross' position, underlines the legal reality of the international community. In a similar vein, Akehurst, with regard to the third school of thought, also points out the fact that "... the various suggested 'third systems' are still little more than names without substance."[99] El Erian, referring to the third position held by the advocates of the institu-

tional theory of law, states that:

"This doctrine has obvious advantages, grouping together as its does rules which present similar distinctive features. It should not conceal the fact, however that the legal basis of these rules must be found in the constituent instrument of the institutions concerned."(100)

And he submits that: "In that sense they may therefore be considered as just one particular branch of general international law."(101)

Detter, like El Erian, specifically raises an objection against the third view maintained by the advocates of the institutional theory of law. She states in this regard that:

"Writers who argue that there is no direct link between the internal sphere of organizations and international law as law between States and organizations seem to extend the dualist theory, in its most rigorous form, to international organizations; or perhaps they should be called 'pluralists' as they conceive a multitude of legal spheres which are not directly related to each other."(102)

And she goes on to say that:

"But they overlook the fact that, contrary to States which are more or less natural units, international organizations owe their existence to agreements between States and that (contrary to certain States established in this way) it lies in the nature of organizations that even their primary decisions, indeed all their activities, will have an immediate bearing on these States."(103)

Thus, she, in her work, contrary to Monaco's view regarding the evaluation of the internal law in question, maintains that there is a direct link between international and the internal law of organizations. Bernhard, who puts emphasis on the existence of the institutional connection between the internal law and international law, specifically objects to Focsaneanu's position. The

relevant passage reads:

"Mir scheint, daß diese dogmatisch beeindruckende Auffassung der Tatsache nicht gerecht wird, daß internes und externes Recht der Organisationen in unlösbarem Zusammenhang stehen und daß das Recht der Organisationen insgesamt von der völkerrechtlichen Basis nicht zu trennen ist."(104)

With somewhat different reasoning, G. Balladore Pallieri rather categorically denies the propriety of the idea of the third legal system. In this regard he states that:

"A y regarder ..., l'opinion de l'existence d'un order juridique interne des organisations internationales est tout autant fantaisiste. Pernons les Nations Unies. Il y a un règlement intérieur de l'Assemblee, il y en a un autre de Conseil, il y en a d'autres de plusieurs organes et pour plusieurs matiéres; mais ils ne forment pas un tout homogène, unitaire, qu'on puisse étudirer dans son ensemble, ainsi qu'on peut étudier, malgré sa complexité et ses distinctions, le droit d'un Etat dans ses principes généraux, dans son développement, dans ses caractères essentiels."(105)

And he goes on to say that:

"Il serait absurde de parler de ressources indépendantes, de moyens, de forces sociales sur lesquels l'organisation peut compter pour obtenir, sans recourir au droit international ou au droit des Etats, la réalisation positive de ses règles."(106)

And he reaches the following conclusion that:

"Il n'y a pas, ..., la moindre trace d'un ordre juridique complet et indépendant à l'intérieur de ces organisations. La valeur de leurs réglements réside seulement dans leur possibilité d'être des faits susceptibles de produire indirectement des conséquences juridiques pour l'ordre international. En résumé, en tant que ces règles sont internes elles ne constituent pas du droit; en tant qu'elle servent de base pour en déduire des conséquences juridiques elles cessent d'etre simplement internes puisque cela se produit dans le droit international."(107)

The advocates of this third position, in dealing with the present

subject, employ either of the following two different methods of approach. That is to say, the one is based upon a definitional approach and the other is based upon a sociological one. Writers who employ the first method of approach[108] lay emphasis upon the differences, in the light of such aspects as subject, binding force between the internal law in question and traditional international law. According to them, the internal law, for example, governs mostly subjects other than the traditional subjects of international law. In view of this, they prefer to characterize the internal law as forming a new independent third legal order. From a pure theoretical point of view, as Seyersted pointed out, there might be "a third possibility, which does not presuppose the recognition of individuals as subjects of international law, namely, the internal law of the organisation, which is an independent system of the law ..."[109] It may be safe to state, as one learned writer[110] points out, that one cannot automatically assume that all law which is not municipal law must by definition be international law. However, as far as this third position is concerned, the substance of what they claim to be an independent third legal system is by no means clear.

Secondly, writers who employ the second method of approach,[111] in evaluating the subject concerned, base their conclusions on the institutional theory of law. There seems no reason, at least logically, for denying the introduction of that theory into the exercise of our present subject. However, the employment of that theory seems, to the present writer's mind, too *a prioristic* a method to take, however valid a proposition it

may be from a sociological point of view. In the case of international organizations as Detter properly pointed out,[112] they owe their existence to agreements between States, while States constitute more or less natural units. This being the case, in evaluating the present subject, it should not be overlooked that international bodies corporate result from international agreements.

The third position suggested by what Detter called "pluralists," however original a construction it may be, does not seem to make for the appropriate systematization of the newer legal phenomenon, rather it brings forth a further conceptual confusion with regard to the legal nature of the internal law in question. The last position which we have observed above, is deemed to stop short as a tentative one and it, at the present stage of development, does not seem to represent the factual legal position of the internal law of international organizations.

VI. Concluding Remarks

In the present work an examination has been made of the legal nature of the internal law of international organizations.

Although the internal law of international organizations ultimately finds its source in public international law, the fact that it bears characteristic features compared with the concept of traditional international law makes it rather difficult to determine the legal position of that law.

So far, various opinions have been expressed by writers on this particular subject. Opinions of writers regarding this subject are roughly divided into three groups. Some writers hold the opinion that the internal law concerned belongs to a body of norms of

international law. Others categorize the internal law as part of international law not in the classical sense but in the sense of an expanded concept of international law. And some of them suggest that this new legal material forms original sources of international law under Article 38 of the Statute of the ICJ ,that is to say, the fourth source of international law.(113) Still others rather prefer to classify that law as a new body of rules, independent of either international law or municipal law of States.

Such a difference of opinion concerning the subject arises mainly from the fact that no universally accepted criterion exists for defining what is meant by a legal system. The evaluation of our present subject also involves such other controversial problems as the definition of the term "internal law," the international personality of international functionaries, and so forth.

As has been suggested in the foregoing, the problem of the evaluation of the internal law can be approached from several points of view. Therefore, if one lays emphasis particularly on the distinctive features of that law which, no doubt, depart from the concept of traditional international law, then, one might draw the conclusion that the law concerned does not belong to international law. On the other hand, if one adopts a wider concept of international law and puts stress particulary on the legal base of that law, then, one might categorize that law as part of international law (or a new branch of international law). Writers who belong to the second group, as has been mentioned in the foregoing, maintain such a position. They, differing from a group of writers who employ the institutional theory of law, emphasize

the fact there is an institutional connection between the internal law in question and a constituent treaty, and then the former suggest that,although the internal law is dissimilar in its features to those of traditional international law, the internal law may be categorized as part of international law.

The most preferable classification regarding the present subject, in our opinion, would be the second school of thought which characterizes that law as a subconcept of an expanded concept of international law. With this position, one can well explain specific features of the law as well as the existence of the legal nexus between the law and a constituent treaty.

As for the third position which classes that law forming a new independent third legal order, we do not subscribe to that position. Since it is doubtful whether what they claim a third *legal system*, which is independent either from municipal legal systems and from international law, has, at the *present stage* of development, its substance to be labelled as a new *legal system* in its strict sense of the term. Rather, we believe, in evaluating a new legal situation, it would be of the utmost importance to consider it in its totality.

The exercise of classification of the present new legal material, due to the nature of its work, requires it to be approached on *well-defined concepts*. With respect to this subject, it should also be pointed out that although classification explains the factual phenomenon and at the same time contributes to a meaningful systematization, we should always keep in mind that the exercise of conceptualization itself has certain limitations.

Notes

(1) For example, Focsaneanu, L., "Le Droit Interne de l'Organisation des Nations Unies," Annuaire Francais de Droit International (A.F.D.I), 1957, pp.328-330; Cahier, P., "Le Droit Interne des Organisations Internationales," Revue Générale de Droit International Public (R.G.D.I.P.), 1963, pp.582-600.

(2) Seyerstd,F., "Jurisdiction over Organs and Officials of States, the Holy See and International Organisations (1)," International and Comparative Law Quarterly (I.C.L.Q.), Vol.14, 1965, pp.52-62.

(3) Skubiszewski, K., "Enactment of Law by International Organizations," B.Y.I.L., Vol.41, p.226.

(4) To allocate a proper position to the laws of international organizations (i.o.), Yokota, Y. suggests the following systematization, i.e., (1) Organic Law of i.o., which is devided into three categories, (a) Internal law of i.o. (rules of procedure, etc.), (b) External law of i.o. (headquarters agreement, etc.), (c) Exterior Law of i.o. (constituent treaties, etc), (2) Operational law of i.o., which is devided into three categories, (a) Regulatory Law (decision of the U.N. Security Council under Chapter VII of the Charter, the so-called Secondary Law of the EC, etc), (b) Operational Law based on agreement(loan agreement of the World Bank, etc.), "Legal Structure of International Organizations—Limitations of the Functional Approach to International Organizations, "Kokusaihou Gaikou Zassi [The Journal of International Law and Diplomacy], Vol.77, No. 6, 1979, at pp.122-3 [in Japanese with English summary].

(5) ILO A.T., Judgment No.28, ILO Official Bullentin, Vol.XL, No.3, p.416.

(6) UN A.T., Judgment No.6, pp.293-4, AT/DEC, 1 to 70.

(7) Judgment Nos.1-3 of the League of Nations A.T.(unreported) quoted in S.Basdevent, Le Fonctionnaires Internationaux, 1931, p. 283

(8) Judgment Nos. 2 and 3 of the League of Nations A.T. quoted in F. Durante, L'Ordinamento Interno delle Nazioni Unite, 1964, p.14.

(9) Judgment No.6 of the L of N A.T., pp.14-5.

(10) ICJ Reports, 1954,p.57

(11) ICJ Reports, 1956, pp.91-3.

(12) See notes (31), (32)

(13) Annual Digest of Public International Law Cases, 1931-32, Case No.11, pp.33-4. See also the Chemidilin v.International Bureau of Weights and Measures case, idem., 1943-45, Case No.34, pp.281-2.

(14) The plaintiff brought his case before the Court of first instance in Rome in 1928. In 1929 the Court held that it was competent, though the Institute pleaded to the jurisdiction of the Italian courts. The Institute then appealed to the Court of Appeal of Rome. In 1930 the appelant's arguments were dismissed by the Court. The Court, in its judgment, makes a specific comparison between the jural personality of the Institute and that of the League of Nations. It further expounds that the international personality of the latter is firmly based on a provision of the Covenant. Consequently, the latter has its own proper judicial organ which deals with its internal disputes arising between the Organization and its officials. While the Institute has not yet been confered a character such as the latter hold. In relation to our specific subject, the Court states that an international body corporate whose jural personality is conferred by an international convention has many characteristic features and the internal affairs of such an entity is regulated by particular juridical norms ("particolari norme giuridiche"). ("Giurisprudenza," Rivista di Diritto Internazionale (R.D.I.), Vol.22, 1930, pp.411-4). See, Van Hecke, G., "Contracts between International Organizations and Private Law Persons, "in Encyclopedia of Public International Law. 1983, at p.93.

(15) See "Giurisprudenza," R.D.I., Vol.23, 1931, pp.386-9.

(16) Ibid., p.388.

(17) Ibid., loc.cit.

(18) Anzilotti, D., Corso di Diritto Internazionale, 1928, p.267.

(19) Jessup, op.cit., p.203.

(20) Ibid., loc,cit.

(21) Ibid., p.204.

(22) Prischepenko, quoted in Jessup's work "Parliamentary ..." p.204.

(23) Prandler, A., "Rules of Procedure of the Security Council," in

Questions of International Law, 1970, pp.175-6. Other advocates of this position are, for example, Ehrlich, L., Prawo narodow, ed.II, 1932, quoted in J.Kolasa, Rules of Procedure of the United Nations General Assembly, 1965, pp.12-3; Rosenne, S., The International Court of Justice - An Essay in Political and Legal Theory, 1957, pp. 213-4.

(24) Jenks, C.W., The Common Law of Mankind, 1958, p.27.

(25) Idem., The Proper Law of International Organisations, 1962, p. xxxvi.

(26) Verdross, A., "On the Concept of International Law," A.J.I.L., Vol. 43,1949, pp.437-8.

(27) Ibid., p.438. See also idem., "Regles Generales de Droit International de la Paix," Recueil des Cours, Vol.30,1929,pp.309-311 and pp. 347-9,idem., "Les Principes Généraux de Droit dans la Jurisprudence Internationale," Recueil des Cours, Vol.52, 1935, pp.237-8.

(28) Zemanek, K., Das Vertragsrecht der Internationalen Organisationen, 1957, S.94. See also J.L.Kunz's book review on this monograph, A.J.I.L., Vol.52, 1958, pp.565-7.

(29) Ibid., p.95.

(30) Virally, M., "The Source of International Law," in Manual of Public International Law, 1968, p.160. See also idem., "La Valeur Juridique de Recommendations des Organisations Internationales," A.F.D.I., 1956, pp.66-96.

(31) Pleadings, Oral Arguments and Documents of the I.C.J., 1953, pp. 343-5.

(32) Reuter, P., "Organisations Internatinales et Évolution de Droit," in L'Évolution de Droit Public, Etudes offertes à Achille Mestre, 1956, p.457. See idem., "Principes du Droit International Public," Recueil des Cours, Vol.103, 1961, p.527 and International Institutions, 1958, pp.262-4. Other advocates of the second position are; Córdova, M., who maintains that "international administrative law ... may form part of a wider concept of the law of nations, but they certainly concern the relations between a State and individuals and therefore they have no room within the interpretation of the words 'international law ' as used in Article 38 of the Statute of the Court."

I.C.J. Reports, 1956, pp.165-66; Langrod, G., The International Civil Service, 1963, p.85; Rideau, J., Juridictions Internationales et Contrôle de Respect des Traites Constitutifs des Organisation Internationales, 1969, pp.18-20; Gascón y Marine, J., "Les Fonctionnaires Internationaux," Recueil des Cours, Vol.41, 1932, pp.723-97, at p.738; Kunz, J.L., "Experience and Techniques in International Administration," in the Changing Law of Nations, 1968, pp.467-91; Skubiszewski,K., "Enactment of ...," op.cit., pp.245-6, idem., "A New Soruce of the Law of Nations: Resolutions of International Organizations," in Recueil d'Etudes Droit International en Hommage a Paul Guggenheim 1968, p.520; Fawcett, J.E.S., "The Place of Law in an International Organization," B.Y.I.L., Vol.36, 1960, pp.321-42; Bastid, S., op.cit., p.67; Detter, I., Law Making by International Organizations, 1965, pp.318-29; Waldock, H., "General Course on Public International Law," Recueil des Cours, Vol.106, 1962, pp.100 -101; Cadoux, C., "La Supériorité du Droit des Nations Unies sur le Droit des Etats Membres," R.G.D.I.P., 1959, pp.651-2; Dinh, N.Q., Droit International Public, 1975,pp.571-590; Bierzanek, R., Metody rozwoju i formulowania prawa miedzynarodowego a O.N.Z., PiP V. III, 1948, quoted in Kolasa's work, Rules of Procedure ..., p.17; Friedmann, W.G., The Changing Structure of International Law, 1964, p.162; Decleva, M., Il Diritto Interno delle Unioni Internazionali, 1962, p.127 ff.; El Erian, A., "The Legal Organization of International Society," in Manual of Public International Law, ed. by M.Sørensen, 1968, p.72-3; Clemens, A., Der Europaische Beamte und sein Disziplinarrecht, 1962, p.26 ff.; Tammes, A.J.P., "Decisions of International Organs as a Source of International Law," Recueil des Cours, Vol.94, 1958, pp.267-270, Seidel-Hohenveldern, I., Das Recht der Internationalen Organisationen einschließlich der Supernationalen Gemeinschaften, 1979,S.191ff, Margiev,V.I., "On Legal Nature of Internal law of International Organisations,"Soviet Yearbook of International Law, Vol.51, 1980, pp.99-110 [in Russian with English summary] ; Shinohara, A., "Enactment of Internal Regulations in the United Nations and the Specialized Agencies." Shakaikagaku Journal(The Journal of Social Science), Vol.21, No.

1, 1983, at p.79 [in Japanese with English summary].

(33) Carlston, K., "International Administrative Law—A Venture in Legal Theory," Journal of Public Law, Vol.8, 1959, p.338.

(34) Ibid., p.340.

(35) Ibid., p.338.

(36) Seyersted, op.cit., p.57.

(37) Idem., "Jurisdiction over...(2),"p.517.

(38) Ibid., p.497.

(39) Focusaneanu.L. "Le Droit Interne de L'Organisation des Nations Unies." 1957,p.322.

(40) Ibid., p.323.

(41) Ibid., p.324.

(42) Ibid., 326. Other advocates of this third position are, for example, Bornemann, K., Das Recht der Bediensteten Internationaler Organisationen, 1964, S.12ff; Scerni, M., "Giurisprudenza," R.D.I., 1931, op,cit. pp.389-91; Sereni, A.P., "International Economic Institutions and the Municipal Law of States, "Recueil des Cours, Vol.96, 1959, p.143, idem., Le Organizzazioni Internazionali, 1959, p.145 ff.; Monaco, R., Manuale di Diritto Internazionale Publico, 1960, pp. 498-502; Morelli, G., "Cours General de Droit International Public, " Recueil des Cours, Vol.89, 1956, p.575;Schermers, H.G., International Institutional Law, Vol.II, 1972, pp.482-5 ; Wengler, WW., Völkerrecht, II, 1964, S.1276 ff.; Dahm, G., Völkerrecht, I, 1958, S. 3; Miehsler, H., "Qualifikation und Anwendungsbereich des internes Rechts internationaler Organisationen," in Berichte der Deutschen Gesellschaft für Völkerrecht, Heft 12, 1973, S.82; Ross, A., quoted in Verdross's work "On the Concept of...," op.cit, p.438. See also Nϕrgaard's work, The Position of the Individual in International Law, 1962, p.305.

(43) Akehurst, M.B., The Law Governing Employment in International Organization, 1967, p.258.

(44) Jenks, The Proper Law ..., op.cit., p.3.

(45) Korowicz, M.,Introduction to International Law, 1959, pp.352-3.

(46) Schermers, H.G., International Institutional Law, Vol.II, 1972, p. 482.

(47) Akehurst, op.cit., p.259.

(48) I.C.J. Reports, 1962, p.491.

(49) He maintains in this regard that "The fact that these constituent instruments are multilateral treaties and, thus, products of one of the Law-creating processes of international law does not necessarily mean that regulations made under such constituent instruments themselves belong to the realm of international law otherwise than in a formal sense." (Schwarzenberger, G., International Law-International Courts III, International Constitutional Law, 1976, p. 468). See also Skubiszewski, op.cit. p.243.

(50) E.g., Article 100 of the U.N. Charter; Art.V of the Conv. on the Privileges and Immunities of the U.N.

(51) Verdross, "On the Concept of...," cp.cit., p.437.

(52) Nϕrgaard, op.cit., pp.297-300.

(53) Carlston, op.cit., p.340.

(54) Waldock, op.cit., pp.96-103.

(55) Korowicz, op.cit., pp.352-3. Cf. idem., "The Problem of the International Personality of Individuals," A.J.I.L., Vol.50, 1956, pp.533-562.

(56) Akehurst, op.cit., p.252 and p.268. See also idem., A Modern Introduction to International Law, 1973, pp.93-7.

(57) Gascon y Marine, op.cit., p.759.

(58) Kunz, op.cit., pp.484-5.

(59) Verdross, op.cit., p.437.

(60) Jenks, The Proper Law..., op.cit., p.xxxii, pp.256-8.

(61) Nϕrgaard, op.cit., p.300.

(62) Jessup, A Modern Law of Nations, 1948, p.132.

(63) Langrod,op.cit., p.85.

(64) Bastid(Basdevant), S., op.cit., p.67 et seq.

(65) Friedmann, op.cit., p.162.

(66) Fawcett, op.cit., p.342.

(67) Virally, op.cit, p.160.

(68) These writers call(or characterize) the law in question respectively as follows; "internal law as original sources of law under Article 38 of the Statute" - Waldock; "Droit interne des communautés d'Etats"

- Gascón y Marin; "International Administrative Ordinances" - Kunz; "International Administrative Law" - Cordova; "inneres Staatengemeinschaftsrecht" - Verdross.

(69) Nørgaard specifically raises his objection against Verdross' position. In this respect, see note (95)

(70) Schwarzenberger, International Law, III, op.cit., pp.369-474, idem., A Manual of International Law, 1967, pp. 80-1.

(71) Focsaneanu, op.cit., pp.321-6.

(72) Carlston, op.cit., p.338ff.

(73) Seyersted, "Jurisdiction over ... (1)," op.cit., p.57, idem., "Applicable Law in Relations between Intergovernmental Organizations and Private Parties," Recueil des Cours, Vol.122, 1967, pp.529-32.

(74) See supra., note (42).

(75) Schwarzenberger, International Law, III, op.cit., pp.472-4.

(76) Focsaneanu, op.cit., p.326. To his position, however, see infra., note (104).

(77) See Akehurst, The Law Governing ..., op.cit., p.252.

(78) Nørgaard, op.cit., p.299.

(79) According to Article II of the Convention, Jurisdiction covers violations of treaties of conventions as well as "other cases of an international character."(Martens, Nouveau Recueil General, 3e serie, Tome 3, 1910, p.106).

(80) As for the Court, see Grieves, F.L., Supranationalism and International Adjudication, 1969, pp.19-44.

(81) Rules of Procedure of the General Assembly(embodying amendments and additions adopted by the Assembly up to 31 Dec. 1973), A/520, Rev.12. With regard to the preparatory work for drafting the Provisional Rules of Procedure of the assembly, see Raport de Comité Exécutif a la Commision Préparatoire des Nations Unies, Londres, 1945.

Provisions of the Rules of Procedure of the Assembly are as follows; I. Sessions(Rule 1-11), II. Agenda(12-24), III. Delegations (25-6), IV. Credentials(27-9), V. President and Vice-Presidents(30-7), VI. General Committee(38-44), VII. Secretariat(45-50), VIII.

Languages(51-7), IX. Records(58-9), X. Public and Private Meetings of the Assembly, Its Committees and Its Subcommittees(60-1), XI. Minute of Silent Prayer or Meditation(62), XII. Plenary Meetings(63-95), XIII. Committees(96-133), XIV. Admission of New Members to the U.N.(134-8), XV. Elections to Principal Organs(139-151), XVI. Administrative and Budgetary Questions(152-160), XVII. Subsidiary Organs of the Assembly(161), XVIII. Interpretation and Amendments(162-3).

(82) Kolasa, op.cit., p.27,188.

(83) E.g., Rules 82,83 and 85(Voting) reproducing the three paragraphs of Article 18 of the Charter, etc.

(84) E.g., Rule 50(Establishment of regulations concerning the staff of the Secretariat) corresponding to the provision of Article 101(1), etc.

(85) Advocates of this position are such as; Anzilotti, op.cit, p.267; Jessup, op.cit., p.203; Prischepenko, op.cit., p.204; Prandler, op.cit., pp.175-6; Ehrlich, op.cit., pp.12-3. Regarding the legal nature of Rules of Procedure of the I.C.J., S. Rosenne characterizes them as "forming part of conventional law."(Rosenne, The International Court of Justice - An Essay in Political and Legal Theory, 1957, pp. 213-4). T. Minagawa, a Japanese writer, also specifically refers to this matter by stating basis of the former derives from the latter in which a specific rule-making act for the enactment of the former is laid down. The same also can be found in municipal legal systems, such as relations between statutes and administrative orders. In addition, the enactment of the former, that has to be in conformity with the provisions of the latter, is purported to function as subsidiary rules for the latter. The former, therefore, should not be considered as forming internal rules of an ordinary type nor as norms whose legal character become different depending on their addressees, but as constituting international procedural norms, together with the latter, which are obligatory both to the Court and the parties before it in the course of a given procés international. (Minagawa, Introduction to International Procedure (Kokusaisosho Josetsu), 1963, p.45). In this respect see also, Bernhardt, R., "Qualifi-

kation und Anwendungsbereich des internen Rechts internationaler Organisationen," in Berichte der Deutschen Gesellschaft fur Völkerrecht, Heft 12, 1973, S.17; Morelli, G., "La Theorie Generale du Proces International," Recueil des Cours, Vol.61, 1937, p.278; Scerni, M., "La Procédure de la Cour Permanente de Justice Internationale," Recueil des Cours, Vol.65, 1938, pp.578-83.

(86) Adherents of this second view are, for example, Kolasa, J., Rules of Procedure ..., op.cit., pp.192-3; Waldock, op.cit., 99-100; Jenks, "The Scope of International Law," B.Y.I.L., Vol.31, 1954, pp.16-8, idem., The Common Law of Mankind, 1958, p.27.

(87) Writers who support the third opinion are as follows: Lukin, P.I., Istoczniki Miezdunarodnogo Prava, 1960, pp.110-12, quoted in Kolsa's work, Rules of Procedure..., op.cit., pp.24-5; Seyersted, " Applicable Law ...," op.cit., pp.531-2.

(88) Jessup, op.cit., pp.203-4.

(89) Namely, Rule 163(Method of amendment) of the Rules of Procedure of the Assembly.

(90) See Kolasa, op., pp.85-107.

(91) For example, Seyersted, "Applicable Law ...," op.cit., p.532, 534; Kunz, "Experiences and ...," op.cit., p.479 and Kolasa. In this respect Kolasa states that "Rules of Procedure are not a legal act in their own right, but a medium to implement provisions of the statute of an organization, which has in law a superior character. Therefore, the provisions in the Rules of Procedure of the General Assembly cannot run contrary to the Charter, but must be adopted to it and conform with its provisions, Rules of Procedure serve to translate provisions of the statute into the practical functioning of an organization, and there their role should begin and end. They have no independent life." (Kolasa, op.cit., p.107).

(92) Regarding the problem of the binding effect the Rules of Procedure of the Assembly, Kolasa's remarks on this particular matter deserve mentioning. The relevant passages read: "In principle, procedural Rules of an organization are obviously provided for its organs, for the functionaries of these organs(such as the presiding officers) and for the representatives of Member States in the organization. In

practice, however, it would be difficult not to observe something which in the literature is generally agreed upon - that these Rules are more or less indirectly, and at times even directly, aimed at the states themselves."(Kolasa, Rules of Procedure..., op.cit., p.192). It may be true that in a certain situation, the application of the Rules (e.g., Rules 35, 72, 73, 74 and 75)may either indirectly or directly affect the political interests of Member States, but, juridically speaking, such an action itself is in no way *ipso facto* aimed at affecting the sovereign rights of Member States, since they are, in the main, concerned with the conduct of business in the organs. In this respect, see also Sørensen, M., "Principes de Droit International Public," Recueil des Cours, Vol.101, pp.92-3.

(93) See Cahier, op.cit., pp.582-600.

(94) Skubiszewski, "Enactment of ...," op.cit., p.226.

(95) Nørgaard, op.cit., p.309.

(96) Ibid., pp.304-310.

(97) Verdoss, "On the Concept of ...," op.cit., p.438.

(98) Nørgaard, op.cit., p.309.

(99) Akehurst, A Modern Introduction ..., op.cit., p.97.

(100) El Erian, op.cit., p.73.

(101) Ibid., loc.cit.

(102) Detter, op.cit., p.328.

(103) Ibid., loc,cit.

(104) Bernhardt, op.cit., S.23, note 46. T. Opsahl also raises his objection against Focsaneanu's proposition by saying that "..., and to my mind too far, in claiming that this internal law, being 'autonomous,' does not belong to international law any more than the internal law of the various States does: both cases we have to do with the internal law of the subjects of international law. This is a matter of words. But the stress on the similarities in structure and content between this internal law of organisations and national law is not entirely convincing." (Opsahl, "An International Constitutional Law?" I.C.L.Q., Vol.10, 1961, p.778).

(105) Balladore Pallieri, op.cit., pp.21-2. To the opinion of Balladore Pallieri, however, Schermers raises the following objection that

"The conclusion of Balladore Pallieri, that no separate internal law of an international organization exists is a consequence of his narrow definition of internal law as an independent system of law."(Schermers, International ..., Vol.II, op.cit., p.482).

(106) Ibid., p.22.

(107) Ibid., p.27.

(108) For example, Seyersted, Carlston, Focsaneanu, Ross, and Bornemann.

(109) Seyersted, "Jurisdiction over ... (2)," op.cit., 497.

(110) Akehurst, A Modern ..., op.cit., p.96.

(111) For example, Monaco, Morelli, Scerni, Sereni, Cahier and Schermers.

(112) Detter, op. cit., p.328.

(113) Shinohara, A. suggests that "In international law the internal regulations are not regarded as conventional law, nor as customary law, nor as general principles of law, so it is possible that they become the new source, the fourth source of international law," supra., note(32), pp. 84-5. However, in this regards, Castaneda, J. sees in the negative by saying that "It is not suggested that Article 38 of the Statute of the Court ought to be modified by the addition of a new clause relating to resolutions of international bodies. The heterogeneous nature of resolutions does not allow this." Legal Effects of United Nations Resolutions, 1969, pp. 5-6. See also, Tammes, A. J. P. "Decisions of International Organs as a Source of International Law." R. C. A. D. I., 1958, II, pp. 265-359, at p. 268.